



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 10416-02
12 September 2003

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 September 2003. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 16 September 1969 at age 17. On 15 December 1969 you received nonjudicial punishment (NJP) for an unspecified offense and were awarded a suspended forfeiture of pay.

On 17 June 1971 you received NJP for disrespect and were awarded reduction to paygrade E-2, extra duty for 30 days, and a \$50 forfeiture of pay. The reduction was suspended for three months.

On 13 September 1971 you were referred for a medical evaluation due to multiple fragment wounds incurred on 29 June 1970 as a result of a booby trap injury sustained while serving in Vietnam. You were diagnosed with partial loss of function in your left leg, possible neuritis, and nerve damage, all of which was secondary to shrapnel wounds. However, you were found fit for duty. On 16 September 1971 you appealed and requested a reevaluation. However, your appeal was denied and you were again found fit for full duty.

On 8 February 1972 you were referred for a medical evaluation due to fragmentation wounds to your left calf and right thigh. You were diagnosed with soft tissue wounds with no demonstrable residual deficit, and it was recommended that you be found fit for duty. You later appealed this diagnoses, and requested release from active duty. However, you were found fit for full duty and your request was subsequently denied. Subsequently, on 11 and 19 December 1972 you received NJP for absence from your appointed place of duty and sleeping on watch.

On 17 April and again on 14 May 1973 you received NJP for a one day period of unauthorized absence (UA) and leaving your post without proper relief.

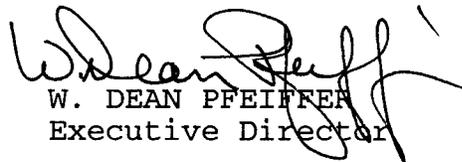
During the period from 4 June 1973 to 15 March 1976 you were in a UA status on four occasions for 981 days. On 30 March 1976 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing periods of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and on 30 April 1976 you received an other than honorable discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, combat service in Vietnam during which you were wounded in action, and your contention that your overall service record was not given due consideration. It also considered your contention that your discharge should be upgraded so that your son could receive a flag. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge because of your frequent misconduct, and especially the repetitive and lengthy periods of UA which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,



W. DEAN PFEIFFER
Executive Director